CSR and Donations- for Banks in India

There appears confusion among banks on the Corporate Social Responsibility ("CSR") requirement under Indian Company Law and Donation restrictions under RBI Guidelines, especially when both read together and hence this note to analyse the position and suggest a way forward.

1. CSR under law & RBI regulation

1.1 CSR requirement under Section 135 of Companies Act, 2013 ("Act")

(a) It is compulsory for a company to spend, during every financial year, minimum 2% of the average of its net profit for 3 previous financial years.

(b) This requirement applies to a company:
-with net worth of Rs.500 crores and more; or
-turnover of Rs. 1,000 and more; or
-net profit of Rs. 5 crores or more during previous financial year.

(c) "company" is defined under Companies Act, 2013 as a company incorporated under Companies Act, 2013 or any previous company law.

It therefore follows that the CSR requirement under Companies Act is applicable to banks in India incorporated under Companies Act, 2013 or any previous company law and thus NOT applicable to other banks in India such as State Bank of India, Public Sector Banks, Foreign Banks operating as branch in India, Cooperative Banks, Regional Rural Banks etc which are not incorporated under Companies Act, 2013 or any previous company law.

1.2 CSR requirement under Companies CSR Policy Rules, 2014 ("Rules")

Surprisingly, Rule 3(1) states that CSR requirement applies to a foreign company operating in India as branch or project office.

In our view, Rules under any Act are to prescribe the procedure for operationalizing the Act and cannot go beyond the Act nor can write or lay down new or additional or supplemental law and hence the Rule(1) appears to be ultra vires the Act, fit to be removed and therefore open to challenge.

1.3 CSR Under RBI Guidelines

RBI has encouraged banks to undertake CSR activities by its circular dated 20.12.2007, etc However, it has not issued any direction to banks for engaging in CSR.

Thus, there is no obligation under RBI regulations for banks in India to engage into CSR activity.

2. Donations under RBI Guidelines

RBI has allowed a profit-making bank to make, during any financial year, donations up to 1% of its previous year's profit subject to other requirements under RBI Circular dated 21.12.2005.

3. Analysis and Way Forward

3.1 Philanthropy has to be voluntary and making it compulsory under law appears inapt and takes away the glory attached to it and probably hence CSR is not compulsory under law globally.

3.2 Being ethical with the stakeholders is the best way of a company to discharge its CSR and compulsory CSR may work just opposite to it besides adding procedural compliance burden.

3.3 Requirement in India of compulsory CSR is thus fit to be challenged legally and also suitable for representing before the Government for making it voluntary in the interest of Ease of Doing Business and for better development of CSR culture if CSR is left to be done voluntarily.

3.4 RBI may allow a profit-making bank to make in a financial year donation in excess of 1% of the profit of that bank for the previous year, provided such donations are in keeping with the CSR prescription under the Act and Rules.

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